

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE**

In the Matter of
Minnesota Remodelers, Inc.,
License No. 20060098

FINDINGS OF FACT
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for a pre-hearing conference before Terrence A. Merritt, Administrative Law Judge, on August 15, 1996, at 1:30 p.m. in Courtroom 1, at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, 100 Washington Avenue South, Minneapolis, Minnesota. Susan E. Damon, Assistant Attorney General, appeared on behalf of the Department of Commerce(Commerce). Christopher C. Daignault(Daignault), president and qualifying person of Minnesota Remodelers, Inc.(Licensee) made no appearance, and no one else representing the Licensee made any appearance. The record was closed at the conclusion of the pre-hearing conference.

This Report is a recommendation, not a final decision. The Commissioner of Commerce(Commissioner) will make the final decision after a review of the record, and may adopt, reject or modify the Findings of Fact, Conclusions and Recommendation contained herein. Pursuant to Minn. Stat. 14.61, after receipt of the Report, the Commissioner shall provide an opportunity to present oral or written argument alleging error in this Report and to present argument related to any recommended adverse action. The parties should contact the office of the Commissioner to ascertain the procedure for filing such argument or appearing before the board.

STATEMENT OF ISSUE

Whether the Licensee engaged in conduct that should result in adverse action against Licensee's license.

Based on the record herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Licensee, since March 29, 1996, is a licensed residential building contractor.
2. Licensee holds license number 20060098.
3. Daignault is currently and has been, at all material times, president and qualifying person of the Licensee.
4. On March 1, 1996, the Licensee, through Daignault, held itself out as a licensed residential building contractor for compensation in Plymouth, Minnesota, and entered into a contract(Contract) with Dan Parks(Parks), 5 Teakwood Lane, Plymouth Minnesota to perform bathroom remodeling at Parks' home for compensation.

5. The Licensee was not exempt from licensing requirements at the time the Contract was entered into.

6. The Licensee did not have a license as a residential building contractor at the time the Contract was entered into.

7. On March 1, 1996 Parks made a \$3,000.00(Three Thousand Dollars) check out to the Licensee as a down payment on the Contract and gave it to Daignault. Daignault cashed the check.

8. The Licensee has performed no work on the Contract, and the Licensee has not returned the \$3,000.00(Three Thousand Dollars) down payment to Parks.

9. Daignault wrote Parks a letter dated May 24, 1996(Letter) indicating that due to personal and financial problems Daignault would not be continuing to work as a building contractor for a while, and that he intended to repay Parks' down payment, but, as of the time of the Letter, had not figured out how to do this.

10. Daignault did not indicate in the Letter where he could be reached.

11. Daignault informed Parks in the Letter that he would call Parks the following week, but did not do so, and has not contacted Parks since the Letter.

12. Licensee listed its address as 12165 - 70th Avenue North, Maple Grove, Minnesota 55311, on its license application. This is Daignault's home address.

13. Sometime before June 21, 1996, Licensee and Daignault moved from the address listed in Finding #12 herein. No forwarding address was left.

14. Licensee has not notified the Commissioner of its new address or of a location or telephone number where it can be contacted.

15. The Notice of and Order for Pre-Hearing Conference and the Amended Notice of and Order for Pre-Hearing Conference were mailed to the Licensee's last know address and also mailed to Daignault in care of Dave Daignault, who, on information and belief, is Daignault's brother.

16. Neither the Licensee nor Daignault or anyone representing either of them appeared at the Pre-Hearing Conference.

CONCLUSIONS

1. The Commissioner of Commerce and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. Sections 14.50, 326.91, and 45.027. The Notice of and Order for Pre-Hearing Conference and the Amended Notice of and Order for Pre-Hearing Conference were proper and all applicable procedural requirements have been fulfilled.

2. Minn. Stat. Section 326.91 Subdivision 1 gives the Commissioner discretion to deny, suspend or revoke any license or censure a licensee, or impose a civil penalty, if the licensee is found to have violated or failed to comply with any provision of Minn. Stat. Sect. 326.83 to 326.98 or any order or rule under those sections.

3. Pursuant to Rule 1400.6000 if a party defaults, the allegations in the Notice of and Order for Pre-Hearing, and the allegations in the Amended Notice of and Order for Pre-Hearing may be taken as true or deemed proved without additional testimony.

4. The Licensee, by holding itself as a building contractor without a valid building contractor license, violated Minn. Stat. Sect. 326.84, Sub. 1b and 326.91, Sub. 1(5).

5. The Licensee, by accepting a down payment for remodeling work and failing to either perform the work or return the down payment, violated Minn. Stat. Sect. 326.91, Sub. 1(6).

6. The Licensee, by failing to notify the Commissioner, within 15(fifteen) business days, of its change of location, violated Minn. R. 2891.0010 and Minn. Stat. Sect. 326.91, Sub. 1(5).

Based upon the forgoing Conclusions, the Administrative Law Judge makes the following:

-3-

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of Commerce take disciplinary action against the license of Minnesota Remodelers, Inc., License No. 20060098.

Dated the 20th day of August, 1996.

TERRENCE A. MERRITT
Administrative Law Judge

Reported: Tape Recorded

NOTICE

Pursuant to Minn. Stat. Sect. 14.62, Subdivision 1, the Commissioner of Commerce is requested to serve the final decision upon each party and the Administrative Law Judge by first class mail.